

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2017

PRONOUNCED ON : 24.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.OP.No.7483 of 2012

State represented by
CBI/ACB/Chennai.

... petitioner/Complainant

Vs.

1.P.V.Bhoopathy

2.B.Shanthi

3.P.V.Chandrasekar

4.P.V.Sudharshan

... Accused/Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records and to set aside the orders of the IX Additional Special Judge for CBI Cases, Chennai in Cr1.MP.No.826 of 2011 in CC.No.10 of 1999 dated 30.01.2012 and further the prosecution may be permitted to examine the additional witnesses.

For petitioner : Mr.K.Srinivasan,
Spl.Public Prosecutor for CBI Cases.

For respondents : Mr.AR.L.Sundaresan, SC
for M.N.Balakrishnan for R1, R2 and R4.
R3 died - Death certificate enclosed.

ORDER

This Criminal original petition is directed against the order passed by the learned IX Additional Special Judge for CBI Cases, City Civil Court, Chennai made in Cr1.MP.No.826 of 2011 in CC.No.10 of 2009 dated 30.01.2012.

2. The case of the petitioner/prosecution is as follows :-

During the period between from 01.01.1989 to 31.03.1996, the A1/P.V.Boopathy, Chairman and Managing Director of NLC alongwith A2 to A5 family members of A1 viz., wife, sons and father in law, entered into criminal conspiracy to conduct criminal misconduct and to acquire movable and immovable assets in the name of A1 and his family members disproportionately to the known sources of income. As on 31.03.1996, A1 to A4 found to be in possession of movable and immovable assets and pecuniary resources to the tune of Rs.47,89,181/- disproportionately to the known sources of income. During the pendency of trial A5/father in law of A1 died and the charges as against A5 is abated.

3. A1 to A4 were given an opportunity to submit their explanations. In an attempt to explain such disproportionate assets held by them, A1 produced an anti dated and fabricated documents showing as if his wife/Shanthi Boopathy and two sons were members of Hindu Undivided family. The documents produced alongwith statements I to VI acquired by A1 and his family members during the check period were proved to be anti dated and fabricated one. Apart from producing the anti dated and fabricated documents, A1 could not give any valid, reasonable and acceptable explanation for the possession of disproportionate assets, hence, the explanation offered by the A1 was rejected. The said fact was also mentioned in the final report. Statements I to VI along with fabricated documents given by A1 through his department is marked as Ex.P363 through PW86.

4. In the meanwhile, another case in RC.No.39 of 1998 was registered by CBI, ACB, Chennai and after investigation charge sheet has been laid before the Chief Metropolitan Magistrate, Egmore, Chennai in CC.No.3666 of 1999 for the offences punishable under Sections 120B r/w.467, 471 and 193 IPC against A1 and others. After hearing both sides, A1 and A2 were convicted by an order dated 26.09.2006. Aggrieved against the order of conviction, CrI.A.No.281 of 2006 has been preferred by the accused on the file of Sessions Court, Chennai, the said appeal was allowed on 24.03.2008. As against the judgment of the appellate Court, CBI has preferred an appeal in CrI.A.No.586 of 2008 before this Court and the same is pending.

5. The prosecution wants to adduce the evidence that the enclosures of statements I to VI such as affidavits, partition deeds, lease deeds are anti dated and fabricated and the same cannot be taken into consideration, the accused may rely on those anti dated and fabricated documents to establish his case. Therefore, the CrI.MP.No.826 of 2011 filed under Section 311

Cr.PC was filed by the prosecution to summon and examine additional witnesses to prove that those documents are anti dated and fabricated. The trial Court without considering the implications rejected the petition stating that the prosecution is precluded in leading evidence on the principle of rule of issue estoppel.

6. The accused filed Crl.OP.No.25700 of 2001 before this Court seeking for joint trial in CC.No.3666 of 1999 and the present CC.No.10 of 1999, the request of the accused was vehemently opposed by the CBI on the footing that two cases have no nexus whatsoever to each other and consequently considering the divergent submissions, putforth by the respective parties, this Court directed the CMM, Egmore to expedite the trial in CC.No.3666 of 1999 within the period stipulated therein and also directed not to close the trial in CC.No.10 of 1999 till the disposal of CC.No.3666 of 1999. Aggrieved over the same, the accused preferred SLP.No.827 of 2002 before the Apex Court. In view of the rival stand taken by the parties, the Apex Court did not deem it fit to interfere with the order passed by the High Court and consequently dismissed the SLP.

7. In the present CC relating to the fabrication of the documents which fact in issue had already been decided by a Court of competent jurisdiction at an earlier trial and also the said finding has attained a finality. It is argued by the prosecution that the petitioner has preferred criminal appeal before the High Court against the judgment of acquittal passed by the appellate Court. Be that as it may, as on date it is obvious that all the facts and issues relating to all the documents detailed above have been decided by a Court of competent jurisdiction and the said finding stands or has not been disturbed till date.

8. Considering the above facts and circumstances, the trial Court dismissed Section 311 petition filed by the prosecution stating that it is nothing but a sheer attempt made on the part of the prosecution to delay the trial one way or the other further the entertainment of this petition would be in conflict with law of issue estoppel propounded by the Supreme Court as discussed supra and the prosecution has not made out any valid case for permitting them to examine the additional witnesses mentioned in this petition. Aggrieved against the said order of dismissal, the CBI has preferred the present criminal original petition before this Court.

9. Heard the rival submissions made on both sides and perused the records.

10. The stand taken for dismissal of Section 311 petition by the trial Court is not correct and the reference made by the trial Court in the decision reported in AIR 1965 SCC 87 - Manipur Administration v. Thockham Bira Singh is not applicable to the facts of the present case in hand.

11. It is also pertinent to place the reliance on the latest judgment of the Hon'ble Supreme Court reported in JT 2017 (4) SC 14 - State of Karnataka V. Selvi J.Jayalalitha and others wherein the Hon'ble Apex Court has made the following observations, which are extracted hereunder :-

208. This Court in Ravinder Singh Vs. State of Haryana, (1975) 3 SCC 742, while dwelling on the rule of issue/estoppel enunciated that in order to invoke the rule of issue-estoppel not only the parties in the two proceedings must be the same but also the fact-in-issue proved or not in the earlier proceeding must be identical with what is sought to be re-agitated in the subsequent one.

209. This ruling was in the context of the plea that in the face of the acquittal of the co-accused (appellant therein) in a separate trial, conviction against him (appellant) was unsustainable. This proposition has been relied upon by the prosecution to reinforce its plea that in any view of the matter, it not being a party to the tax assessment proceedings, at any level, the decision passed therein would not be of binding bearing at the trial by invoking the rule of issue estoppel.

210. A Constitution Bench of this Court in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. (supra), in this context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in other as both the cases have to be decided on the basis of the evidence adduced therein.

12. It is also relevant to extract Section 311 Cr.PC and the same is extracted hereunder :-

311. Power to summon material witness, or examine person present - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or

recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

13. The criminal Court is not just an umpire who deals with only the materials brought by the parties before it. The Court has to play an active role in the administration of criminal justice. Though, it is not the normal duty of the Court to collect evidence, in cases where justice requires, the Court has ample power to further enquire into the matter in order to ascertain the truth. If further evidence is essential to the just decision of the case, the Court will definitely and should definitely exercise its powers and allow further evidence to be given. If it is satisfied that the evidence of any person not examined or further evidence of any person already examined is essential to the just decision of the case, it is duty to take such evidence. The material witness necessary for the just decision of the case can be summoned under Section 311 Cr.PC of the prosecution and also of the accused even if it results in filling of loopholes in the prosecution case.

14. One of the contention raised by the learned Senior Counsel appearing for the respondents/accused is that witnesses have not been cited as witness in the present case, the witnesses cited in the other case cannot be summoned and examined in this case as witness.

15. In this regard, the contention raised by the learned Senior Counsel for the respondents/accused is not acceptable one, the persons not examined under Section 161 can also be summoned as witness under Section 311 Cr.PC.

16. The reading of the above said section 311 Cr.PC would clearly shows the powers given to the Court to find out the truth, the Court can summon any persons as witnesses at any stage, if the parties establish the case to bring the truth into the matter, the Court can allow to examine the said witnesses. Under these circumstances, considering the nature of the case and also the nature of the witnesses and documents, it is absolutely necessary for the witnesses have to be examined before the Court. Even, if the petition filed by the prosecution has no reason to be allowed would say the other reasons for considering the facts and circumstances and serious nature of the offence and nature of the documents. Even, the Court can suo-moto call the witnesses as Court witnesses and examine those persons.

17. Under the said circumstances, the stand taken by the trial Court is not valid, this Court warrants interference with the order passed by the trial Court.

18. In the result, the criminal original petition is allowed, by setting aside the order dated 30.01.2012 made in CrI.MP.No.826 of 2011 in CC.No.10 of 2009 on the file of the IX Additional Special Judge for CBI Cases, Chennai. Considering the duration of pendency of the case, some of the witnesses have already been examined and only the further witnesses have to be examined, the trial Court is directed to issue summons to the witnesses and dispose of the main case within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The IX Additional Special Judge for CBI Cases, Chennai
2. The Special Public Prosecutor, CBI Cases, High Court, Madras.

+1cc to M/s.M.N.Balakrishnan, Advocate, S.R.No.51926

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